STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF APPLICATION OF BANKERS TRUST COMPANY For Refund of Sales and Use Taxes imposed pursuant to Article 28 and under the authority of Article 29 of the Tax Law, and imposed pursuant to New York City Local Law No. 73 of 1965, as amended, and the local laws, ordinances or resolutions of the Counties of Nassau and Suffolk for the period commencing August 1, 1965 and ending August 31, 1965, for two quarterly periods ending November 30, 1965 and February 28, 1966, for the period commencing March 1, 1966 through May 31, 1969, and for the period commencing June 1, 1969 through December 23, 1969.	FORMAL DETERMINATION

The taxpayer, Bankers Trust Company, having duly and timely filed applications for refund of sales and compensating use taxes for the periods August 1, 1965 through August 31, 1965, September 1, 1965 through November 30, 1965, December 1, 1965 through February 28, 1966, March 1, 1966 through May 31, 1969, and June 1, 1969 through December 23, 1969 imposed pursuant to Article 28 and under the authority of Article 29 of the Tax Law, and imposed pursuant to New York City Local Law No. 73 of 1965, as amended, and the local laws, ordinances or resolutions of the Counties of Nassau and Suffolk; and said applications for refund having been denied by the State Tax Commission; and the taxpayer then having duly and timely filed applications for a hearing by the State Tax Commission to review the denials of the requested refunds; and a stipulation of facts having been entered into by and between the taxpayer, Bankers Trust Company, and the State Tax Commission, a copy of such stipulation of facts together with the exhibits which are part thereof, being hereto attached and made a part of this determination, the State Tax Commission hereby finds the following facts:

1. The taxpayer, Bankers Trust Company is a commercial bank and trust company incorporated under the laws of the State of New York. It is now and was at all relevant times engaged in the commercial banking business in this State.

2. The taxpayer, during the periods involved, exercised substantially similar functions and engaged in substantially similar business as national banks in the State of New York incorporated under the laws of the United States.

3. The taxpayer, during the periods involved, was a purchaser of tangible personal property and services, including the following:

> electronic computer equipment and services, office equipment, office furniture and furnishings, office supplies, check books and other bank forms, vaults, safe deposit boxes, automobiles and trucks, repairs, utilities, cleaning, maintenance supplies, medical supplies, publications, storage, printing and mailing, dining room and food service, and give away premiums.

All of the property, and all other items purchased during the aforesaid periods by the taxpayer on which sales or compensating use taxes have been paid, are of a description, nature and kind subject to the sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law in the case of persons subject to tax thereunder.

4. All of the aforesaid tangible personal property services and items are similar in description, nature and kind to those purchased or used in this State by purchasers generally, and upon which taxes have been paid by such purchasers whether or not such purchasers were doing a banking business or residing in, doing business in or incorporated in the State of New York or under the laws thereof. The taxpayer concedes that taxes were

lawfully due and owing from purchasers generally. The taxpayer contends however that those purchasers which were doing a banking business under the facts set forth in Finding of Fact No. 2 were immune from the tax during the periods involved.

5. There is no language contained in Articles 28 and 29 of the Tax Law, or any local laws, ordinances or resolutions under the authority of such latter article, which imposes sales or compensating use taxes on purchases by banks or banking institutions in a manner different than upon purchasers generally, nor is there any language contained therein which states that banks or banking institutions, whether state or national, are exempt from paying sales or compensating use taxes on its purchases; furthermore, paragraph (2) of subdivision (a) of section 1116 of the Tax Law grants to the United States of America and any of its agencies or instrumentalities as purchaser, user or consumer, an exemption only insofar as it is immune from taxation. Such paragraph reads as follows:

> "Sec. 1116. Exempt organizations.--(a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:
>
> * * *
>
> "(2) The United States of America, and any of its agencies and instrumentalities, insofar as it is immune from taxation where it is the purchaser, user or consumer, or where it sells services or property of a kind not ordinarily sold by private persons;"

6. As decided by the United States Supreme Court in First Agric. Nat. Bank of Berkshire County v. State Tax Comm., 392 U.S. 339, a state has no power to tax national banks unless specifically authorized by Congress and that Congress had not, prior to the expiration of the periods in issue, authorized the imposition of sales and use taxes; that the New York Court of Appeals in the case of Liberty Nat. Bank & Trust Co. v. William K. Buscaglia, 23 N Y 2d 933, reversing 21 N Y 2d 357;

affirmed a lower court order exempting national banks from sales and use taxes upon the constraint of the First Agric. Nat. Bank of Berkshire County decision supra, and of Dickinson v. First Nat. Bank of Homestead, 393 U.S. 409; that accordingly the taxes imposed by Article 28 and under the authority of Article 29 of the Tax Law of New York State were not among those permitted by Congress in R.S., Section 5219 (12 U.S.C. Section 548) and national banks were therefore immune from taxation under such Articles.

7. Section 4 of Article XVI of the Constitution of the State of New York, which Article was adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938, provides as follows:

"ARTICLE XVI

* * *

> "§ 4. Where the state has power to tax corporations incorporated under the laws of the United States there shall be no discrimination in the rates and method of taxation between such corporations and other corporations exercising substantially similar functions and engaged in substantially similar business within the state."

8. On December 24, 1969, immediately subsequent to the taxable periods herein, the law set forth in section 548 of Title 12 of the United States Code (R.S., Section 5219) was amended to permit the imposition by states of sales and compensating use taxes upon national banks; that from December 24, 1969 to date, by virtue of the provisions of the aforesaid Federal statute and paragraph (2) of subdivision (a) of section 1116 of the Tax Law of New York which exempted instrumentalities of the United States of America from sales and use taxes only if immune from taxation, national banks lost their immunity, and from December 24, 1969 to date sales and compensating use taxes have been imposed upon national banks; that the taxpayer is not contesting the payment of sales and compensating use taxes for any periods subsequent to December 23, 1969.

Based upon the foregoing the State Tax Commission hereby DETERMINES:

A. That the sales and compensating use taxes imposed by Article 28 and under the authority of Article 29 of the Tax Law are imposed upon purchasers generally.

B. That, accordingly, such taxes are general taxes and not imposed upon banks as a class; that such taxes are imposed without discrimination upon a general class of purchasers including banks. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

C. That neither the spirit nor the letter of section 4 of Article XVI of the Constitution of the State of New York is violated by the provisions of Articles 28 and 29 of the Tax Law and of any laws, ordinances or resolutions made under the authority of Article 29, which impose taxes without discrimination, upon a broad class in which banks are included, not because they are engaged in banking but because they are purchasers. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

D. That throughout the entire taxable period herein, the restriction set forth in section 4 of Article XVI of the Constitution of the State of New York had no application, and state banks remained subject to the sales and compensating use taxes, since such periods were prior in time to December 24, 1969, upon which date Congress granted to the states permission to impose sales and compensating use taxes on national banks. (Matter of Bank of Manhattan Co. v. Murphy, 293 N.Y. 515)

E. That any sales and compensating use taxes which may have been paid by the taxpayer during the periods involved were

required to be paid; accordingly, the State Tax Commission properly denied the taxpayer's application for refund, and such denial of refund is hereby affirmed.

STATE TAX COMMISSION

DATED: ALBANY, NEW YORK
DECEMBER 22, 1971

BY Norman Gallman

Bruce Manley

Milton Koerner

STATE OF NEW YORK

STATE TAX COMMISSION

- x

IN THE MATTER OF APPLICATION OF :

BANKERS TRUST COMPANY :

For Refund of Sales and Use Taxes imposed pursuant to : Article 28 and under the authority of Article 29 of the Tax Law, and imposed pursuant to New York City : Local Law No. 73 of 1965, as amended, and the local laws, ordinances or resolutions of the Counties of : Nassau and Suffolk for the period commencing August 1, 1965 and ending August 31, 1965, for two : quarterly periods ending November 30, 1965 and February 28, 1966, for the period commencing March 1, : 1966 through May 31, 1969, and for the period commencing June 1, 1969 through December 23, 1969. :

- x

STIPULATION OF FACTS

IT IS HEREBY STIPULATED AND AGREED that the following facts are applicable with respect to all the above-captioned periods and further that such facts shall be taken in lieu of a formal hearing as the basis for any determination by the State Tax Commission, Bankers Trust Company (hereinafter called "the taxpayer") and the State Tax Commission having waived the right to present any further evidence at a hearing or to make any further examination or inquiry except as set forth below:

1. The taxpayer filed applications for refund of sales and compensating use taxes on tangible personal property, services and other items purchased or used by it within this State, such taxes being imposed under the laws specified in the caption hereof.

2. Such applications for refund, copies of which are hereto attached and marked Exhibit A1, A2, A3, A4, and A5 were duly and timely filed pursuant to section 1139 of the Tax Law for the periods, in the amounts, and on the dates set forth below:

PERIODS	AMOUNT	DATE
August 1, 1965 through August 31, 1965	$ 17,499.72	September 17, 1968
September 1, 1965 through November 30, 1965	126,051.58	December 17, 1968
December 1, 1965 through February 28, 1966	118,191.95	March 19, 1969
March 1, 1966 through May 31, 1969	2,185,845.04	June 20, 1969
June 1, 1969 through December 23, 1969	647,923.98	April 16, 1970

3. The first three applications for refund filed for the periods August 1, 1965 through August 31, 1965, September 1, 1965 through November 30, 1965 and December 1, 1965 through February 28, 1966 were denied by the State Tax Commission on June 19, 1969, the application for a refund filed for the period March 1, 1966 through May 31, 1969 was denied by the State Tax Commission on July 7, 1969, and the last application for a refund filed for the period June 1, 1969 through December 23, 1969 was denied by the State Tax Commission on May 5, 1970, copies of letters by the State Tax Commission denying such applications being hereto attached, and marked Exhibit B1, B2 and B3 respectively.

4. The taxpayer, on September 17, 1969, duly and timely filed applications for a hearing by the State Tax Commission to review the denials of the refunds requested in the first four said applications and on July 1, 1970 duly and timely filed an application for a hearing by the State Tax Commission to review the denial of the refund requested in the last said application, copies of letters applying for a hearing being hereto attached and marked Exhibit C1, C2 and C3.

5. The taxpayer is a commercial bank and trust company incorporated under the laws of the State of New York. It is now and was at all relevant times engaged in the commercial banking business in this State, primarily in the City of New York.

6. The taxpayer, during the periods involved, exercised substantially similar functions and engaged in substantially similar business as national banks in the State of New York incorporated under the laws of the United States.

7. The taxpayer, during the periods involved, was a purchaser of tangible personal property and services, including the following:

> electronic computer equipment and services, office equipment, office furniture and furnishings, office supplies, check books and other bank forms, vaults, safe deposit boxes, automobiles and trucks, repairs, utilities, cleaning, maintenance supplies, medical supplies, publications, storage, printing and mailing, dining room and food service, and give-away premiums.

All of the property, and all other items purchased during the aforesaid periods by the taxpayer on which sales or compensating use taxes had been paid, are of

a description, nature and kind subject to the sales and compensating use taxes imposed by Article 28 and pursuant to the authority of Article 29 of the Tax Law in the case of persons subject to tax thereunder.

8. All of the aforesaid tangible personal property, services and items are similar in description, nature and kind to those purchased or used in this State by purchasers generally and upon which taxes have been lawfully due and owing and paid by such purchasers, whether or not such purchasers were doing a banking business or residing in, doing business in or incorporated in the State of New York or under the laws thereof; provided, however, that this paragraph shall not be construed as a stipulation as to whether or not such taxes were lawfully due and owing and paid by purchasers doing a banking business in the State of New York in the manner set forth in paragraph 6 of this stipulation.

9. No determination denying a refund of tax shall be made by the State Tax Commission on the ground that proof of payment of tax by the taxpayer has not been shown, unless the taxpayer is first afforded an opportunity to present proof of such payment

acceptable to the State Tax Commission.

10. Before any refund of taxes can be made, the taxpayer shall first be required to submit proof that the taxes have been paid by it. Furthermore, before any refund can be made, the State Tax Commission shall have the right to examine into the proof offered by the taxpayer and to audit the books and records of the taxpayer to ascertain the amount of taxes paid. Nothing in this paragraph shall be construed to deprive the taxpayer of any lawful remedies to review the amount refunded in the event that a refund is made and the amount refunded is less than the amount requested by the taxpayer in its applications for refund.

11. With respect to any other periods for which the taxpayer has duly filed timely applications for refund of sales and use taxes and also timely applications for hearing in the event of a denial of the applications for refund, the State Tax Commission may defer the issuance of determinations for such periods until a final determination has been made by the State Tax Commission or by the courts with respect

to the periods herein.

STATE TAX COMMISSION

BY _____
Counsel for State Tax Commission

BANKERS TRUST COMPANY

BY _____
Attorney for Taxpayer

ST-437 (6/68)

A1

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU
STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT

NAME OF CLAIMANT	IDENTIFICATION NO. (IF REGISTERED VENDOR)
STREET ADDRESS: Chemical Bank New York Trust Company	PERIOD COVERED BY CLAIM
CITY: 16 Wall Street STATE: ZIP CODE:	REFUND CLAIMED: August 1, 1965 - August 31, 1965 $
NAME OF REPRESENTATIVE (IF ANY): New York New York 10015	CREDIT CLAIMED: 17,499.72 $
STREET ADDRESS	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY STATE ZIP CODE	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On June 17, 1963 the Supreme Court of the United States in the case of First Agricultural National Bank of Berkshire County v. State Tax Commission, held that state sales and use taxes on purchases by National banks of tangible personal property for their own use were invalid on the ground that states had no power to tax National banks unless specifically authorized by Congress, and that Congress had not authorized the imposition of sales and use taxes. This case clearly applies to the New York Sales Tax as well as to the Massachusetts Sales Tax there involved. Article XVI, Section 4, of the New York State Constitution provides that state banks may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use taxes paid by the taxpayer to vendors or to the Department of Taxation and Finance during the period covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the taxpayer and is available for review. No taxes of which a refund is claimed herein have been refunded to the taxpayer by a vendor.

The above refund claim of $17,499.72 consists of $1,461.04 of Compensating Use Tax and $16,038.68 of Sales Taxes paid to vendors.

I, H.W. Pollack, Assistant Controller, the claimant named above; or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE	TITLE	DATE
H.W. Pollack	Assistant Controller	Oct. 17, 1965

SEE INSTRUCTIONS ON THE BACK OF THIS FORM

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU
STATE CAMPUS, ALBANY, N.Y. 12226

A-2

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT

NAME OF CLAIMANT: Bankers Trust Company	IDENTIFICATION NO. (IF REGISTERED VENDOR)
STREET ADDRESS: 16 Wall Street	PERIOD COVERED BY CLAIM: Sept.1,1965 thru Nov.30,1965
CITY: New York STATE: New York ZIP CODE: 10015	REFUND CLAIMED: $ 126,051.58
NAME OF REPRESENTATIVE (IF ANY)	CREDIT CLAIMED: $
STREET ADDRESS	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY STATE ZIP CODE	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On June 17, 1968 the Supreme Court of the United States in the case of First Agricultural National Bank of Berkshire County v. State Tax Commission held that state Sales and use taxes on purchases by National banks of tangible personal property for their own use were invalid on the ground that states had no power to tax National banks unless specifically authorized by Congress, and that Congress had not authorized the imposition of sales and use taxes. This case clearly applies to the New York Sales Tax as well as to the Massachusetts Sales Tax there involved. Article XVI; Section 4, of the New York State Constitution provides that state banks may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use taxes paid by the taxpayer to vendors or to the Department of Taxation and Finance during the period covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the taxpayer and is available for review. No taxes of which a refund is claimed herein have been refunded to the taxpayer by a vendor.

The above refund claim of $126,051.58 consists of $6,187.33 of compensating Use tax and $119,864.25 Sales taxes paid to Vendors.

I, Harold J. Beach, Deputy Controller, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE	TITLE	DATE
H. Beach	Deputy Controller	12/1/68

ST-117 (6/68)

A 3

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU
STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT

NAME OF CLAIMANT: Bankers Trust Company	IDENTIFICATION NO. (IF REGISTERED VENDOR)
STREET ADDRESS: 16 Wall Street	PERIOD COVERED BY CLAIM: Dec. 1, 1965 - Feb. 28, 1966
CITY: New York / STATE: New York / ZIP CODE: 10015	REFUND CLAIMED: $ 118,191.95
NAME OF REPRESENTATIVE (IF ANY)	CREDIT CLAIMED: $
STREET ADDRESS	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY / STATE / ZIP CODE	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On June 17, 1968 the Supreme Court of the United States in the case of First Agricultural National Bank of Berkshire County v. State Tax Commission held that state Sales and use taxes on purchases by National banks of tangible personal property for their own use were invalid on the ground that states had no power to tax National Banks unless specifically authorized by Congress, and thatCongress had not authorized the imposition of sales and use taxes. This case clearly applies to the New York Sales Tax as well as to the Massachusetts Sales Tax there involved. Article XVI, Section 4, of the New York State Constitution provides that state banks may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use taxes paid by the taxpayer to vendors or to the Department of Taxation and Finance during the period covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the taxpayer and is available for review. No taxes of which a refund is claimed herein have been refunded to the taxpayer by a vendor.

The above refund claim of $118,191.95 consists of $ 9,721.12 of compensating Use tax and $108,470.83 Sales taxes paid to vendors.

I, Ronald J. Fletcher, Associate Controller, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE	TITLE	DATE
Ronald J. Fletcher	Associate Controller	March 19, 1969

SEE INSTRUCTIONS ON THE BACK OF THIS FORM

ST-107 (5/69)

STATE OF NEW YORK - DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU
STATE CAMPUS, ALBANY, N.Y. 12226

A4

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT

NAME OF CLAIMANT: Bankers Trust Company	IDENTIFICATION NO. (IF REGISTERED VENDOR): 13-4941247C
STREET ADDRESS: 16 Wall Street	PERIOD COVERED BY CLAIM: March 1, 1966-May 31, 1969
CITY: New York STATE: New York ZIP CODE: 10015	REFUND CLAIMED: $ 2,195,045.04
NAME OF REPRESENTATIVE (IF ANY):	CREDIT CLAIMED: $
STREET ADDRESS:	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY: STATE: ZIP CODE:	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On June 17, 1969 the Supreme Court of the United States in the case of First Agricultural National Bank of Portsmouth Ohio v. State Tax Commission held that state sales and use taxes on purchases by national banks of tangible personal property for their own use were invalid on the ground that states had no power to tax National Banks unless specifically authorized by Congress, and that Congress had not authorized the imposition of sales and use taxes. This case clearly applies to the New York Sales Tax as well as to the Massachusetts Sales Tax there involved. Article XII, Section 4, of the New York State Constitution provides that state banks may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use taxes paid by the taxpayer to vendors or to the Department of Taxation and Finance during the period covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the taxpayer and is available for review. No taxes of which a refund is claimed herein have been refunded to the taxpayer by a vendor.

The above refund claim of $2,195,045.04 consists of $87,934.10 of compensating Use tax and $2,107,910.94 Sales taxes paid to vendors.

I, Norman W. Pollock, Associate Controller, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE	TITLE	DATE
	Associate Controller	June 20, 1969

SEE INSTRUCTIONS

ST-137 (7/69)

A5

STATE NEW YORK - DEPARTMENT OF TAXATION AND FINANCE
SALES TAX BUREAU
STATE CAMPUS, ALBANY, N.Y. 12226

APPLICATION FOR CREDIT OR REFUND OF STATE AND LOCAL SALES OR USE TAX

TYPE OR PRINT

NAME OF CLAIMANT: Bankers Trust Company	IDENTIFICATION NO. (IF REGISTERED VENDOR):
STREET ADDRESS: 16 Wall Street	PERIOD COVERED BY CLAIM: June 1, 1969 - December 23, 1969
CITY: New York STATE: New York ZIP CODE: 10015	REFUND CLAIMED: $ 647,923.98
NAME OF REPRESENTATIVE (IF ANY):	CREDIT CLAIMED: $
STREET ADDRESS:	IF CREDIT SHOWN ABOVE HAS ALREADY BEEN CLAIMED ON A RETURN, INDICATE
CITY: STATE: ZIP CODE:	PERIOD

Give a full explanation below, including all facts on which your claim is based. Use additional sheets if necessary and submit all documents necessary to properly substantiate your claim.

On June 17, 1968 the Supreme Court of the United States in the case of First Agricultural National Bank of Berkshire County v. State Tax Commission held that state sales and use taxes on purchases by National Banks of tangible personal property for their own use were invalid on the ground that states had no power to tax National Banks unless specifically authorized by Congress, and that Congress had not authorized the imposition of sales and use taxes. This case clearly applies to the New York Sales Tax as well as to the Massachusetts Sales Tax there involved. Article XVI, Section 4, of the New York State Constitution provides that these banks may not be subject to taxation in circumstances in which national banks are not so subject. Accordingly, the imposition of the sales tax on taxpayer was invalid and refund thereof is claimed.

Since this claim for refund includes all sales and use taxes paid by the taxpayer to vendors or to the Department of Taxation and Finance during the period covered by the claim, it is not practicable to include evidence of payment with this claim. Evidence of payment of these taxes is in the possession of the taxpayer and is available for review. No taxes of which a refund is claim herein have been refunded to the taxpayer by a vendor.

The above refund claim of $647,923.98 consists of $17,138.25 of compensating Use tax and $630,785.73 Sales taxes paid to vendors.

I, Herman W. Pollack, Asst. Vice President, the claimant named above, or partner, officer, or other authorized representative of such claimant, do hereby make application for refund and/or credit of sales or use tax, pursuant to the New York State Tax Law, and certify that all New York State sales and use taxes, if any, for which this claim is filed, have been paid; that no portion of the tax has been refunded or credited to me by any vendor; and that this claim does not include any items for which refund or credit was previously received.

SIGNATURE	TITLE	DATE
Herman W. Pollack	Assistant Vice President	April 28, 1970

SEE INSTRUCTIONS ON THE BACK OF THIS FORM

This determination denying your claim in full, as indicated above, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Law Bureau hearing calendar.

Very truly yours,

Arthur M. Paskin

Tax Administrative Supervisor
Audit and Review Unit

JLB:pdv

The denial indicated above is acceptable to me. I hereby withdraw my applications for refunds filed on September 17, 1969, December 17, 1969 and March 19, 1969 in the amounts of $17,499.72, $126,051.58 and $118,191.95.

Signature _____ Date _____

B 2

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
JOSEPH H. MURPHY, PRESIDENT
A. BRUCE MANLEY

STATE CAMPUS
ALBANY, N. Y. 12226
TELEPHONE 474 - 2121

JUL 7 1969

SALES TAX BUREAU
FREDERICK W. TIERNEY
DIRECTOR

ADDRESS YOUR REPLY TO
Audit Group II

Bankers Trust Company
16 Wall Street
New York, New York 10015

Attention Mr. Norman W. Pollack
Associate Controller

Gentlemen:

Reference is made to your claim for refund dated June 20, 1969 in the amount of $2,185,845.04.

Please be advised that your claim is being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C.548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Buscaglia, 23 N. Y. 2d 999, State banks are still liable for these taxes. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination denying your claim in full, as indicated above, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Law Bureau hearing calendar.

Very truly yours,

Arthur M. Parkes

Tax Administrative Supervisor
Audit and Review Unit

JLB:pdv

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on June 20, 1969 in the amount of $2,185,845.04.

Signature

Date

B 3

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE CAMPUS
ALBANY, N. Y. 12226
TELEPHONE 474 - 2121

SALES TAX BUREAU
FREDERICK W. TIERNEY
DIRECTOR

ADDRESS YOUR REPLY TO
Audit & Review Unit

MAY 5 1970

Bankers Trust Company
16 Wall Street
New York, New York

Attention Mr. Norman Pollack
Assistant Vice President

Claim for Refund
$647,923.98 (4/16/70)

Gentlemen:

Please be advised that your claim for a refund of sales tax, in the amount of $647,923.98, is hereby being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York State and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C. 548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Buscaglia, 23 N.Y. 2d 933, State banks are still liable for these taxes. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination, denying your claim in full, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Hearing Unit calendar.

Very truly yours,

Arthur M. Paskin

Assistant Chief
Audit and Review Unit

JLB:aa

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on April 16, 1970 in the amount of $647,923.98.

Signature _____ Date _____

C 1

September 9, 1969

State of New York
Department of Taxation and Finance
State Campus
Albany, New York 12226

Attention: Mr. Arthur M. Paskin
Tax Administrative Supervisor
Audit and Review Unit, Audit Group II

Gentlemen:

In accordance with the provisions of Section 1139(b) of the Tax Law, Bankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, dated June 19, 1969, of our claim for a refund of sales and use taxes in the amounts of $17,199.72, $126,651.58 and $118,191.95 dated September 17, 1968, December 17, 1968 and March 19, 1969 respectively. Please be advised that Bankers Trust Company also requests an informal conference before the hearing.

Our claim is based on R.S. 5219, 12 U.S.C. 548, First Agricultural National Bank of Berkshire Co. v. State Tax Commission, 392 U.S. 339 (1968), and Liberty National Bank and Trust Co. v. Buscaglia, 23 N.Y. 2d 933 (1969), which hold that National Banks are exempt from New York State and local sales and use taxes. State chartered banks should also be exempt from these taxes because of the effect of the Constitutions of the United States and of New York.

We submit that Matter of Bank of Manhattan Company, 293 N.Y. 515 (1944), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amendment of the United States Constitution and under Article I, Section 11 of the New York Constitution since it would lack the "national

basis for classification" needed to sustain class legislation. Because the Bank of Manhattan case provides an unconstitutional interpretation of Article XII, Section 1, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission erred in proposing to deny our claim. For these reasons we request both a hearing before the State Tax Commission and a preliminary informal conference.

Sincerely yours,

MMP:11

C 2

September 9, 1969

State of New York
Department of Taxation and Finance
State Campus
Albany New York 12226

Attention. Mr. Arthur H. Raskin
Tax Administrative Supervisor
Audit and Review Unit, Audit Group II

Gentlemen.

In accordance with the provisions of Section 1139(b) of the Tax Law, Bankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, dated July 7, 1969, of our claim for a refund of sales and use taxes in the amount of $1,185,845.94 dated June 19, 1969. Please be advised that Bankers Trust Company also requests an informal conference before the hearing.

Our claim is based on R.S. 5219, 12 U.S.C. 548, First Agricultural National Bank of Berkshire Co. v. State Tax Commission, 392 U.S. 339 (1968), and Liberty National Bank and Trust Co. v. Buscaglia, 23 N.Y. 2d 933 (1969), which hold that National Banks are exempt from New York State and local sales and use taxes. State chartered banks should also be exempt from these taxes because of the effect of the Constitutions of the United States and of New York.

We submit that Matter of Bank of Manhattan Company, 293 N.Y. 515 (1944), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amendment of the United States Constitution and under Article 1, Section II of the New York Constitution since it would

lack the "rational basis for classification" needed to sustain class legislation. Because the Bank of Manhattan case provides an unconstitutional interpretation of Article XII, Section 1, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission erred in proposing to deny our claim. For these reasons we request both a hearing before the State Tax Commission and a preliminary informal conference.

Sincerely yours,

RWP:ll

C 3

July 1, 1970

State of New York
Department of Taxation and Finance
State Campus
Albany, New York 12226

Attention: Mr. Arthur M. Rashin
Tax Administrative Supervisor
Audit and Review Unit, Audit Group II

Gentlemen:

In accordance with the provisions of Section 1139(b) of the Tax Law, Bankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, dated May 5, 1970 of our claim for a refund of sales and use taxes in the amount of $647,923.95 dated April 16, 1970. Please be advised that Bankers Trust Company also requests an informal conference before the hearing.

Our claim is based on R.S. 5219, 12 U.S.C. 548. First Agricultural National Bank of Berkshire Co. v. State Tax Commission, 392 U.S. 339, (1968), and Albany National Bank and Trust Co. v. Lorenzini, 20 N.Y. 2d 233, (1967), which hold that National Banks are exempt from New York State and local sales and use taxes. State chartered banks should also be exempt from these taxes because of the effect of the Constitutions of the United States and of New York.

We submit that Matter of Bank of Manhattan Company, 223 N.Y. 515 (1924), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amendment of the United States Constitution and under Article I, Section II of the New York Constitution since it would lack the "rational basis for

State of New York
Department of Taxation and Finance

classification" needed to sustain class legislation. Because the Bank of Manhattan case provides an unconstitutional interpretation of Article 2/1, Section 4, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission erred in proposing to deny our claim. For these reasons we request both a hearing before the State Tax Commission and a preliminary informal conference.

Sincerely yours,

H. J.

RJFigh

C 3

July 1, 1970

State of New York
Department of Taxation and Finance
State Campus
Albany, New York 12226

Attention: Mr. Arthur M. Rachlin
Tax Administrative Supervisor
Audit and Review Unit, Audit Group II

Gentlemen:

In accordance with the provisions of Section 1139(b) of the Tax Law, Bankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, dated May 5, 1970 of our claim for a refund of sales and use taxes in the amount of $647,923.55 dated April 16, 1970. Please be advised that Bankers Trust Company also requests an informal conference before the hearing.

Our claim is based on R.S. 5219, 12 U.S.C. 548. First Agricultural National Bank of Berkshire Co. v. State Tax Commission, 392 U.S. 339, (1968), and Albany National Bank and Trust Co. v. Lunsenfelt, 20 N.Y. 2d 220, (1969), which hold that National Banks are exempt from New York State and local sales and use taxes. State chartered banks should also be exempt from these taxes because of the effect of the Constitutions of the United States and of New York.

We submit that Matter of Bank of Manhattan Company, 293 N.Y. 515 (1944), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amendment of the United States Constitution and under Article 3, Section 22 of the New York Constitution since it would lack the "rational basis for

lack the "rational basis for classification" needed to sustain class legislation. Because the Bank of Manhattan case provides an unconstitutional interpretation of Article XI, Section 1, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission erred in proposing to deny our claim. For these reasons we request both a hearing before the State Tax Commission and a preliminary informal conference.

Sincerely yours,

MWP-11

C 2

September 9, 1969

State of New York
Department of Taxation and Finance
State Campus
Albany New York 12226

Attention. Mr. Arthur H. Baskin
Tax Administrative Supervisor
Audit and Review Unit, Audit Group II

Gentlemen.

In accordance with the provisions of Section 1139(b) of the Tax Law, Bankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, dated July 7, 1969, of our claim for a refund of sales and use taxes in the amount of $1,185,845.94 dated June 20, 1969. Please be advised that Bankers Trust Company also requests an informal conference before the hearing.

Our claim is based on R.S. 5219, 12 U.S.C. 548, First Agricultural National Bank of Berkshire Co. v. State Tax Commission, 392 U.S. 339 (1968), and Liberty National Bank and Trust Co. v. Buscaglia, 23 N.Y. 2d 933 (1969), which hold that National Banks are exempt from New York State and local sales and use taxes. State chartered banks should also be exempt from these taxes because of the effect of the Constitutions of the United States and of New York.

We submit that Matter of Bank of Manhattan Company, 293 N.Y. 515 (1944), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Thus any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amendment of the United States Constitution and under Article 1, Section 11 of the New York Constitution since it would

basis for classification" needed to sustain class legislation. Because the Bank of Manhattan case provides an unconstitutional interpretation of Article XII, Section 1, that section must now be read as requiring equal treatment for both state and nationally chartered banks.

Accordingly, we contend that we have a valid claim for a refund of sales and use taxes and that the Commission erred in proposing to deny our claim. For these reasons we request both a hearing before the State Tax Commission and a preliminary informal conference.

Sincerely yours,

WJP:11

C 1

September 9, 1969

State of New York
Department of Taxation and Finance
State Campus
Albany, New York 12226

Attention: Mr. Arthur M. Paskin
Tax Administrative Supervisor
Audit and Review Unit, Audit Group II

Gentlemen:

In accordance with the provisions of Section 1139(b) of the Tax Law, Bankers Trust Company hereby applies for a hearing before the State Tax Commission based upon your denial, dated June 19, 1969, of our claim for a refund of sales and use taxes in the amounts of $17,199.72, $126,051.58 and $118,191.95 dated September 17, 1968, December 17, 1968 and March 19, 1969 respectively. Please be advised that Bankers Trust Company also requests an informal conference before the hearing.

Our claim is based on R.S. 5219, 12 U.S.C. 548, First Agricultural National Bank of Berkshire Co. v. State Tax Commission, 392 U.S. 339 (1968), and Liberty National Bank and Trust Co. v. Buscaglia, 23 N.Y. 2d 933 (1969), which hold that National Banks are exempt from New York State and local sales and use taxes. State chartered banks should also be exempt from these taxes because of the effect of the Constitutions of the United States and of New York.

We submit that Matter of Bank of Manhattan Company, 293 N.Y. 515 (1944), should no longer be followed. Circumstances have changed materially in the intervening twenty-five years since the decision was issued. There is no longer any significant functional difference between state and national banks. Any law or decision which attempted to classify them differently would be unconstitutional under both the Fourteenth Amendment of the United States Constitution and under Article I, Section II of the New York Constitution since it would lack the "national

If you apply for a hearing, you may at the same time request an informal conference with a representative of the Sales Tax Bureau to be held prior to placing your application on the Hearing Unit calendar.

Very truly yours,

Arthur M. Paskin

Assistant Chief
Audit and Review Unit

JLB:aa

The denial indicated above is acceptable to me. I hereby withdraw my application for refund filed on April 16, 1970 in the amount of $647,923.98.

Signature

Date

B 3

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE CAMPUS
ALBANY, N. Y. 12226
TELEPHONE 474 - 2121

SALES TAX BUREAU
FREDERICK W. TIERNEY
DIRECTOR
ADDRESS YOUR REPLY TO
Audit & Review Unit

MAY 5 1970

Bankers Trust Company
16 Wall Street
New York, New York

Attention Mr. Norman Pollack
Assistant Vice President

Claim for Refund
$647,923.98 (4/16/70)

Gentlemen:

Please be advised that your claim for a refund of sales tax, in the amount of $647,923.98, is hereby being denied in full.

In the opinion of our legal counsel, even though national banks may be exempt from the New York State and local sales and use taxes under the provisions of R.S. 5219, 12 U.S.C. 548 as interpreted in First Agricultural National Bank of Berkshire County vs. State Tax Commission, 392 U.S. 339, 20 L ed. 1138 and Liberty National Bank and Trust Co. vs. Buscaglia, 23 N.Y. 2d 933, State banks are still liable for these taxes. This conclusion is based on the interpretation by the Court of Appeals of Article XVI, Section 4 of the New York State Constitution in Matter of Bank of Manhattan Company, 293 N.Y. 515.

If you agree to the denial, please sign the statement at the bottom of either copy of this letter and mail it to the New York State Sales Tax Bureau, Audit and Review Unit, Building 8, State Campus, Albany, New York 12226.

This determination, denying your claim in full, shall be final and irrevocable unless you apply to the State Tax Commission for a hearing within ninety (90) days from the date of this letter in accordance with the provisions of Section 1139(b) of the Tax Law.